

# Holland & Knight

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## **Broward Metropolitan Planning Organization Federal Update September 2015**

### **SUMMARY OF H&K ACTIVITIES**

Holland & Knight scheduled meetings for the MPO with the Broward County congressional delegation during the Fort Lauderdale Chamber of Commerce's Washington Summit, September 29-30. The meetings with the delegation were to continue to engage the Members of Congress to advocate their support for the MPO's TIGER grant application to Department of Transportation (DOT) Secretary Foxx. Holland & Knight also drafted talking points for the Members to use during their calls with Secretary Foxx. We also provided updates on the Wave Streetcar project and work on quiet zones.

Holland & Knight also participated in the monthly call with the Board to provide a federal legislative update and review last year's federal priorities to update for the upcoming year. Also discussed was H&K attendance at the November board meeting to provide a federal update.

### **CONGRESSIONAL UPDATE**

FY 2016 Appropriations Update: Both the House and Senate reconvened on September 8 after a five-week August recess period. With the end of the current fiscal year on September 30, much of Congress's attention was placed on a passing a short-term continuing resolution (CR). Historically, passing a CR has been relatively easy; however, this time House leadership was paralyzed given the amount of pressure from conservative Republicans wanting to defund Planned Parenthood via the CR. Specifically, the pressure to pass a CR originated from the House Freedom Caucus – a group of more than 40 Republican House members – who were calling on Speaker Boehner (R-OH) to resign if he did not pass a CR with Planned Parenthood defunding language. If the CR had contained such policy riders, it would have not passed the Senate, and the President would have vetoed it.

In order to prevent a government shutdown, Senate Majority Leader Mitch McConnell (R-KY) introduced a CR (using an earlier-passed House bill because rules require that appropriations bill originate in the House) that would keep the government operating through December 11, 2015. The first bill included language to defund Planned Parenthood knowing it would fail but also to show the House with certainty that it would fail. Senator Marco Rubio (R-FL) voted for this version of the CR while Senator Bill Nelson (D-FL) voted against it.

Immediately after the first CR failed, Senator McConnell took up a clean CR bill for the Senate to debate. The day after the Senate's move to debate the second CR and only a handful of days

before September 30, Speaker Boehner announced he will resign as Speaker of the House and will retire from Congress on October 30, 2015. Boehner stated, "The first job of any Speaker is to protect this institution that we all love. It was my plan to only serve as Speaker until the end of last year, but I stayed on to provide continuity to the Republican Conference and the House. It is my view, however, that prolonged leadership turmoil would do irreparable damage to the institution. To that end, I will resign the Speakership and my seat in Congress on October 30."

Ultimately, the day that federal government funding was set to expire - the Senate approved the clean CR by a [vote of 78-20](#), sending the measure to the House for approval. Senator Nelson supported the CR, and Senator Rubio did not vote. Having earlier amended the rules of the House to allow for same-day consideration, the House approved the CR by a [vote of 277-151](#). All members of the Broward MPO House delegation voted in favor. President Obama signed the CR into law, thus avoiding a government shutdown.

Looking forward, Congress will have to pass either an omnibus appropriations bill or another continuing resolution by December 11 to avoid a government shutdown. All sides are saying they would like to avoid a government shutdown, but there is no pathway at this point on how to achieve a long-term spending solution given a new era of House leadership starting soon.

House and Senate leadership have been meeting with the White House and the Office of Management and Budget (OMB) to reach an agreement on the topline budget numbers for fiscal years 2016 and 2017. Democrats and the Administration want to increase the budget numbers from the 2013 budget deal, and Republicans members differ on the budget caps. Many Republicans want to include defense funding levels only and keep domestic funding levels at status quo while conservative Republicans want to keep the current budget caps in place. Senate Democrats have filibustered all FY 2016 appropriations bills due to the budget caps, and President Obama has threatened to veto the bills until the budget caps are raised. There will have to be some type of budget deal reached for FY 16 appropriations bills to move forward.

House Leadership: The House Republican conference was supposed to meet on Thursday, October 8, to choose its nominee for the Speaker to replace retiring Speaker John Boehner (R-OH). The full House chamber was scheduled to vote on October 29. Current Majority Leader Kevin McCarthy (R-CA); Rep. Jason Chaffetz, chairman of the Committee on Oversight and Government Reform; and Rep. Dan Webster (R-FL) were candidates for the job. On October 8, Rep. Kevin McCarthy announced that he was withdrawing his name from the Speaker race. He issued the following statement, "I have the deepest respect and regard for each Member of the Conference and our team as a whole. It is imperative for us to unite and work together on the challenges facing our country. Over the last week it has become clear to me that our Conference is deeply divided and needs to unite behind one leader. I have always put this Conference ahead of myself. Therefore I am withdrawing my candidacy for Speaker of the House. I look forward to working alongside my colleagues to help move our Conference's agenda and our country forward." The vote for Speaker has been delayed.

Treasury Department Announces Debt-Limit Deadline: The Treasury Department recently informed Congress that the debt ceiling must be lifted by November 5 in order to avoid a federal default, and the politics behind doing so may be difficult. House Republicans put up a bitter fight during debt ceiling discussions in 2011, and will likely do so again this year. In the past,

Speaker Boehner has had to rely on a core group of Republicans and all of the Democrats to increase the government's borrowing authority. Having Speaker Boehner navigate the debates and votes this time around before leaving office may make the issue more likely to pass than leaving it for the new Speaker to deal with. In a letter to Speaker Boehner, Treasury Secretary Jack Lew noted "Based on new information, we now estimate that Treasury is likely to exhaust its extraordinary measures on or about Thursday, Nov. 5. At that point, we would be left to fund the government with only the cash we have on hand, which we currently forecast to be below \$30 billion. This amount would be far short of net expenditures on certain days, which can be as high as \$60 billion. Moreover, given certain payments that are due in early to mid-November, we anticipate that our remaining cash would be depleted quickly."

Work Continues on Surface Transportation Bill: The House Transportation and Infrastructure Committee still needs to pass its own multi-year transportation bill. The current extension for surface transportation expires on October 29. The committee was originally intending to unveil its legislation sometime in early September for committee markup. However, that action was delayed amid new disagreements and increasing rumors that House Ways and Means Committee Chairman Paul Ryan (R-Wis.) was working on an international tax reform package that could provide robust funding for a long-term bill. These discussions have broken down. The committee is now trying to finalize its draft and mark up a bill the last week of October. They are still trying to identify payfors. The committee may consider a six year authorization with only three years paid for just as the Senate DRIVE Act does. It is growing increasingly likely that Congress will have to pass another extension of the Highway Trust Fund as there is not enough time for the House to pass a bill and complete a conference report with the Senate before October 29.

Positive Train Control (PTC) Extension: On September 30, the House Transportation and Infrastructure Committee introduced bipartisan legislation to extend the deadline for railroads to implement PTC technology. Without action, all trains will have to have PTC in place by December 31 of this year or be face penalties from the Federal Railroad Administration (FRA). The bill, Positive Train Control Enforcement & Implementation Act of 2015, H.R. 3651, would extend the deadline to the end of 2018. Also last week, a bipartisan letter from almost 50 Senators was sent to Senate leadership on making it clear that it is "imperative that Congress take up this issue immediately, as railroads will begin to alter their service standards weeks before the actual deadline." A similar letter was sent from 150 Representatives to House and relevant committee leadership.

This week, Senate Commerce Committee Chairman John Thune (R-SD) and House Transportation and Infrastructure Committee Ranking Member Peter DeFazio (D-OR) said that a PTC extension could be included as part of the highway bill extension. However, on October 8, a group of Senate Democrats led by Senator Cory Booker (D-NJ) sent a letter to Majority Leader Mitch McConnell and Commerce Chairman John Thune listing the conditions they think should be met to make any PTC extension legislation acceptable. Their requests include calls for a more comprehensive rail policy, an increased federal role, increased funding for rail safety, and the deadline extension should not go beyond 2018. Other signers to the letter include Senators Richard Blumenthal (D-CT), Tom Carper (D-DE), Bob Casey (D-PA), Chris Coons (D-DE), Dianne Feinstein (D-CA), and Ed Markey (D-MA).

These actions build upon the recent GAO report released on September 16 entitled “Positive Train Control: Additional Oversight Needed as Most Railroads Do Not Expect to Meet 2015 Implementation Deadline.” GAO found that a majority of railroad operators will not be able to meet the statutory deadline. 20 out of 29 railroads interviewed by GAO estimate that they will implement PTC within one to five years after the December 31, 2015 deadline. Three others did not have an estimated completion date. GAO also found that the FRA’s efforts to oversee implementation of PTC have not been sufficient to report on individual railroads. The GAO recommends that the FRA develop a comprehensive plan to conduct oversight that includes monitoring the railroads’ progress, in turn helping to address uncertainties around interoperability. The complete GAO report on Positive Train Control can be found [here](#).

## **ADMINISTRATION UPDATE**

Federal Transit Administration (FTA) Proposes Transit Safety Management Rule: On September 30, FTA published a proposed [rule](#) that would require transit agencies to create a plan for managing their capital assets, as well as creating state of good repair performance measures and targets for transit agencies, as directed by MAP-21. Specifically, the rule would require agencies to create a tiered Transit Asset Management plan to inventory the condition of its rolling stock, equipment and other items, with an eye toward prioritizing investments that enhance safety. The docket will be open for public comments through Nov. 30.

FTA Republishes CIG Comment Notice: In the Federal Register on September 17, the FTA republished its June 24 request seeking comments on data collection requirements for the Capital Investment Grant (CIG) program. The new deadline to submit comments is October 19, 2015. The notice can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2015-09-17/pdf/2015-23293.pdf>

## **GRANTS UPDATE**

TIGER: While not officially confirmed by the Department of Transportation (DOT), we are hearing that TIGER awards will be announced late October or early November. Holland & Knight will continue to watch for this announcement and weigh in with the congressional delegation to have them express support for the MPO’s application. Per the offices of Reps. Hastings and Frankel, their call with Secretary Foxx is scheduled for October 8.

Low or No Emission Bus Grant Program: On September 24, the FTA announced that \$22.5 million is available in discretionary monies for Low and No Emission buses. Of that amount, \$3 million is available for facilities. The deadline to submit an application is November 23. The Notice of Funds Availability (NOFA) can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2015-09-24/pdf/2015-24231.pdf>. If additional funding is appropriated in FY 2016, FTA is likely to make all awards for FY 2015 and FY 2016 at one time.

Pilot Program for TOD Planning Projects: On September 14, FTA announced \$19.5 million in awards to improve transit access in selected communities around the country. A complete list of awards can be found here: [http://www.fta.dot.gov/grants/15926\\_16564.html](http://www.fta.dot.gov/grants/15926_16564.html)